

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Employer**

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**Docket No. 13-776  
Issued: July 8, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 13, 2013 appellant filed a timely appeal of a September 7, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her reconsideration request. Because over 180 days elapsed from the most recent merit decision of August 16, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her case, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On April 10, 2011 appellant, then a 40-year-old mail handler, filed an occupational disease claim alleging a right shoulder condition, including repeated tendinitis, sprains, bursitis

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

and a tear on October 20, 2010 due to her employment duties. She noted that she had two previous shoulder claims and attributed her current condition to lifting, pushing and pulling heavy equipment.

In a letter dated May 17, 2011, OWCP requested additional factual and medical information from appellant in support of her occupational disease claim. She provided a June 13, 2011 narrative statement indicating that she had two previous shoulder claims in 2003 (OWCP File No. xxxxxx821) and 2008 (OWCP File No. xxxxxx521). Appellant filed a recurrence of disability claim under the 2008 file which was denied and OWCP had instructed her to file an occupational disease claim. She described her employment duties.

Appellant submitted medical records beginning in 2009. Dr. Cora A. Mallot, a Board-certified family practitioner, examined appellant on August 10, 2009 due to right shoulder pain. She noted that appellant performed pulling and moving at the employing establishment and diagnosed right shoulder bursitis. On August 21, 2009 Dr. Sequita L. Richardson, a Board-certified family practitioner, examined appellant due to right shoulder pain and diagnosed bursitis of the right shoulder.

In a report dated May 25, 2010, Dr. Peter I. Vilkins, an osteopath, diagnosed tendinitis likely associated with overuse and performed an injection. He described appellant's work as a mail handler, noting that she performed lifting with repetitive motions and overhead activity. On August 10, 2010 Dr. Vilkins diagnosed right shoulder pain noting that she worked as a mail carrier.

Dr. V. Paula Messmore, a Board-certified family practitioner, examined appellant on August 12, 2010. She reviewed the mail handler position, which required activities with appellant's upper extremities. Dr. Messmore diagnosed chronic tendinitis and bursitis as well as shoulder impingement syndrome on the right.

On September 1, 2010 Dr. Richardson noted appellant's right shoulder pain and diagnosed right shoulder impingement syndrome. On October 20, 2010 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan, which demonstrated a full thickness tear of the posterior supraspinatus and mild acromioclavicular osteoarthropathy. On October 22, 2010 Dr. Richardson reviewed the MRI scan.

Dr. Steven B. Smith, a Board-certified orthopedic surgeon, examined appellant on January 10, 2011 and noted her shoulder symptoms in 2009. He opined that her current symptoms were due to her previous injury. Appellant experienced significant shoulder girdle chronic pain associated with her prior shoulder strain as a result of her July 18, 2008 employment injury. On January 18, 2011 Dr. Messmore, examined appellant and noted that she was a mail handler and performed many activities with her upper extremities. She diagnosed shoulder impingement syndrome on the right.

By decision dated August 16, 2011, OWCP denied appellant's occupational disease claim on the grounds that the medical evidence did not establish that work duties caused or contributed to her diagnosed rotator cuff tear. It noted that her 2008 claim was accepted for right rotator cuff sprain, bicipital tendinitis and disorders of the bursae and tendons.

Appellant requested reconsideration on August 15, 2012 and submitted a statement alleging that her current shoulder condition was due to her employment. She requested that OWCP review the medical documentation previously submitted. By decision dated September 7, 2012, OWCP declined to reopen her claim for consideration of the merits on the grounds that she did not submit relevant new evidence or argument in support of her request.

### **LEGAL PRECEDENT**

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>2</sup> Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup> Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>4</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup>

### **ANALYSIS**

Appellant filed a claim for a shoulder condition as the result of an occupational disease. On August 16, 2011 OWCP denied her claim due to a lack of supporting medical evidence. Appellant requested reconsideration on August 15, 2012 and submitted a statement requesting that OWCP review the medical evidence in the record.

The Board does not have jurisdiction over the August 16, 2011 OWCP merit decision. The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3) requiring OWCP to reopen the case on review of the merits of her claim. In her August 15, 2012 request for reconsideration, appellant did not identify or show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant argued that the medical evidence of record supported her claim of occupational disease. As evidenced by the history of this case, this is not a new argument. OWCP addressed the medical evidence in the August 16, 2011 decision.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606.

<sup>4</sup> *Id.* at § 10.608.

<sup>5</sup> *M.E.*, 58 ECAB 694 (2007).

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not meet this requirement of 20 C.F.R. § 10.606(b)(3) as she did not submit any new medical evidence.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that as appellant has not met any of the criteria for granting of a merit review of her claim, OWCP properly declined to reopen his claim for consideration of the merits, pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board